Advising Investigating Officers

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Agenda

Purpose – Pointers on Advising & Helping IOs

Topics: 1. Preliminary Questions

2. Selecting & Briefing IOs

3. JAG Roles During the Investigation

4. Reviewing Reports

Conclusion

Preliminary Questions

- **Does this matter need an investigation?**
- **Is there a legal or regulatory requirement for an investigation?**
- **Is an investigation required to resolve an issue?**
- **What is the best type of investigation?**
  - **IG?**
  - **Law enforcement? Civilian or military?**
  - **Informal AR 15-6 or Commander Directed Investigation?**
  - **Other type of investigation?**

Preliminary Questions

- **Is there an established forum or process for the matter?**
  - **Claims against the government – JA**
  - **Performance report appeals – Personnel**
  - **Article 15 or Court-Martial problems – JA or Defense Counsel**
  - **Equal Opportunity Cases – EEO Counselor**
  - **Use the established forums & processes whenever possible.**
  - **See AFI 90-301, Table 2.9, for referral tips.**

Preliminary Questions

- **Who can do this investigation?**
  - **Allegations about O-7 selects and other senior officials must be immediately reported to NGB/IG, DAIG or SAF/IG for their information & action.**
  - **IGs must handle cases of reprisal, restriction or improper mental health evaluation referral.**
  - **Commanders may investigate their command to correct problems.**
  - **Avoid "self-investigation." A commander should not investigate their own misconduct.**

Selecting IOs

- **Recommend IOs with judgment, knowledge of any specialty area, & no conflicts of interest.**
- **People skills & maturity are important.**
- **IOs must outrank subjects.**
- **It is difficult to estimate the time for some cases, so don’t pick an IO with an upcoming retirement.**
- **Good writing skills are essential.**
- **Do you need an “outsider” for a neutral IO?**

Selecting IOs

- **Does the IO need any administrative support from the appointing authority?**
  - **Help collecting and tabbing evidence?**
  - **Help transcribing interviews?**
- **The “ideal IO” is a hard-working, mature, dedicated person.**
  - **Can they abandon their primary duties to focus on the investigation?**

Briefing IOs - Materials

- **Have materials ready for the IO:**
  - **Appointment Memo**
  - **Documentary Evidence & Reports**
  - **AR 15-6 & DA Form 1574 (& AR 15-6 Investigation Guide for Informal Investigations)**
  - **USAF Commander-Directed Investigation Guide (& referral to www.ig.hq.af.mil/igq/Downloads/IGQDownloads.htm)**

Briefing IOs - Materials

- Statement & Rights Advisement Forms
  - DA Forms 2823 & 3881
  - AF Form 1168 at www.e-publishing.af.mil
- UCMJ Articles or State Codes
  - Dereliction of Duty
  - False Official Statements
  - Other Articles
  - DA Pam 27-9, Military Judges Benchbook

Briefing IOs - Materials

- **ARs & AFIs for Specific Cases**
  - **AR 600-8-4 & AFI 36-2910, Line of Duty Cases**
  - **Reports of Survey, Security Incidents, Lost Weapons, Serious Injury, etc**
- **Any special ARs & AFIs with Standards**
  - **DoD 5500.7R, Joint Ethics Regulation**
  - **AFI 36-2909, Professional & Unprofessional Relationships**
  - **AR 600-20, Army Command Policy (Relationships & Fraternization, paragraphs 4-14 to 4-16)**

Briefing IOs - Materials

- **Sample Investigation Report**
- **Office Supplies**
- **Tape Recorders**
- **Office space with computer & phone**
- **Name, rank, phone number & location of the JAG assigned to advise the IO**
- **Privacy Act statements for witnesses**

Briefing IOs - Materials

- **Draft allegations**
  - **Well written allegations are the foundation for a good investigation**
  - **Consider key parts of an allegation: Who? What? When? Where? How? Why? & In violation of what standard?**
- **Sample questions for witnesses & subjects**
- **Sample statements (verbatim, summarized, samples for phone interviews, etc)**

Briefing IOs - Process

- **Help IOs understand the goals of the case**
  - **Fact Finding Cases**
  - **Accusatory Cases**
  - **Diagnostic Cases**
  - **Will the IO write recommendations?**
  - **What are the appointing authority's goals for the case?**
  - **Who is the audience for the report?**

Briefing IOs - Process

- Give the IO an outline of the process
  - Courtesy calls, if required
  - Gather all documentary evidence
    - Review it all, put relevant material in report
  - Interview witnesses
    - Talk to background witnesses first, subject last
  - Write & rewrite report
  - Submit for legal review & comments
  - Gather additional information and revise report
  - Submit final report to appointment authority
  - Brief appointment authority

Briefing IOs - Rules

- **Be sure the IO knows the standards involved in the case**
  - **Rules for rights advice & elements of any offenses that may be raised by the facts**
  - **Preponderance of evidence**
  - **Any specific rules, requirements or guidance for the case, such as:**
    - **Use of government credit cards for supply purchases**
    - **Use of government travel credit cards**
    - **Line of Duty standards**
    - **Rules for the use of government property**

Briefing IOs - Errors

- Tell the IO the most common errors
  - Poor English
  - Poorly organized report
    - Identify the FACTS, ANALYSIS, CONCLUSIONS & RECOMMENDATIONS
    - Use tabs, page numbers and proper administrative work
  - Leaving out key facts
  - Missing issues or recommendations

Briefing IOs - Errors

- Common errors
  - Superficial report that does not resolve an issue
  - Not collecting or reviewing available evidence
  - Failure to anticipate follow up questions
    - Tell the readers what you reviewed
    - Consider what your audience will ask about
    - Answer questions in advance

Briefing IOs - Errors

- **Common errors**
  - **Assuming the reader knows something about the case or standards**
  - **Refusal of the IO to apply their common sense to the facts, analysis, conclusions & recommendations**
  - **Failure to resolve conflicts in testimony**
    - **Who & what does the IO believe & why?**

JAG Roles in Investigation

- **Advise command on proper type of investigation & recommend IOs**
- **Brief IO & provide materials**
- **Write draft allegations**
- **Answer legal & practical questions**
- **Advise IO**
- **Suggest information sources**

JAG Roles in Investigation

- **Help the IO with witness issues**
  - **Prepare IO for any rights advisements**
  - **Help IO with key interviews & rights advice**
  - **Prepare IO for any union representation issues**
  - **Tell the IO who the military defense counsel is**
  - **Role play interviews to practice questions**
- **Proofread report**

JAG Roles in Investigation

- **Be a "Buffer" for the IO**
  - **If the IO runs into any problems getting information or documents, they must not get into a conflict with any person or office.**
  - **The IO should refer the matter to the JAG, so the JAG can get the information or documents.**
  - **JAGs may have to educate people about the purpose & authority of the investigation.**
  - **IOs must appear & be neutral during their cases.**

Reviewing Reports

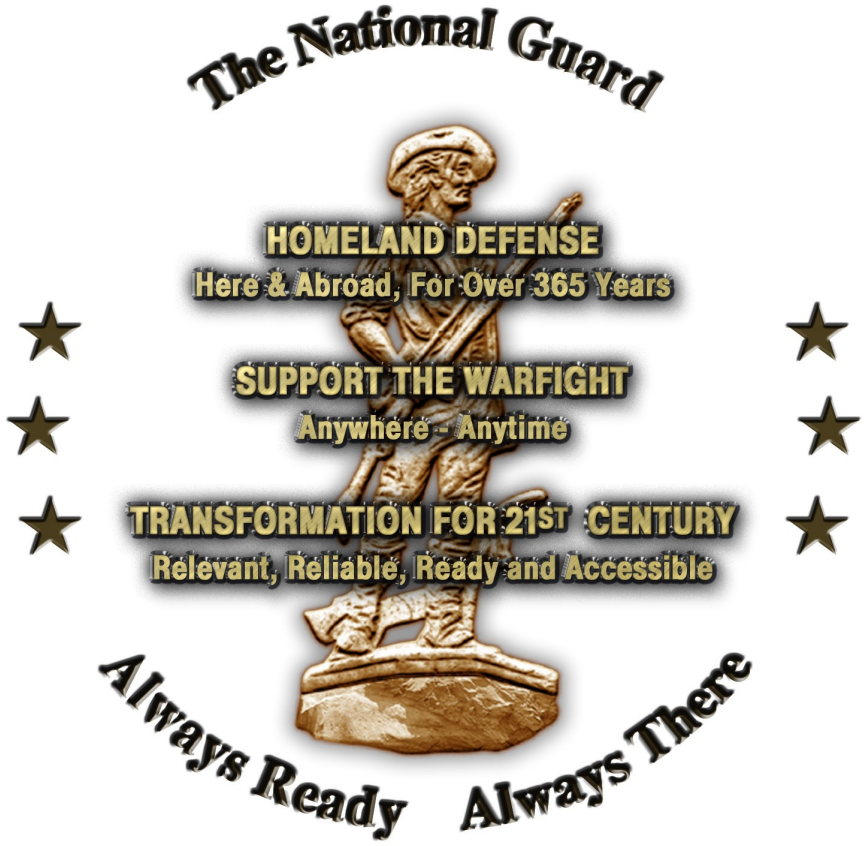
- **Use the “two JAG process”**
  - **One JAG advises the IO.**
  - **A different JAG does a legal review.**
  - **A new perspective on the report helps insure it is truly complete, logical & legally sufficient.**
- **Get help**
  - **If you are reviewing a type of investigation for the first time, ask the JAG experts for guidance.**
  - **Protect your reputation & your command by making sure you know the standards for review.**

Conclusion

Give the IO the help they need to write a good report!

The time you save will probably be your own!

Questions?



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